IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 302.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

GERALDINE LITTLE, alias MILDRED PARKER, *Respondent*.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

BRIEF FOR GERALDINE LITTLE, ALIAS MILDRED PARKER.

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PRELIMINARY STATEMENT.

The Court will note that the brief for petitioner on this appeal is not responsive to the questions presented on the appeal. The brief sets out the charge (P. 2) on which respondent was convicted, that "on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance

of his duty," and then by implication directs attention away from the residence of respondent as if the charge had been placed on what happened at a place removed from the residence. Petitioner's brief states (P. 4) "The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of respondent's dwelling."

Petitioner sought to take this course in the Municipal Court of Appeals (R. 11-12) to which that court replied, "The Government insists that the case may be resolved without reference to the Constitutional propriety of the attempted entry. It is said that the appellant's (respondent's) arrest was predicated upon her actions on a public street in interfering with the arrest of Allen. However, the information upon which appellant (respondent) was convicted charged her with interfering with a public health officer, not a police officer. Making arrest is not a part of the duties of a health officer. Furthermore, the case was not tried upon this theory. The trial judge's memorandum opinion deals only with the constitutional issue, and we believe that our decision also must turn upon it."

This same approach was indulged in in the argument and brief of the petitioner on the hearing in the Circuit Court of Appeals (R. 19). The court said: "As a separate consideration, the District (petitioner) also presents an argument based upon some conflict in the testimony as to whether appellee (respondent) was arrested for hindering the health officer by refusing to unlock the door on the premises or was arrested for interfering with a police officer in the arrest of another person at a police call box some distance down the street. That argument has no bearing upon this case, because the information upon which appellee (respondent) was convicted charged her with interfering with a health inspector, not the policeman, upon the premises, not upon the street, and with hindering the performance of duty by the health inspector, not with interfering with a police officer in the performance of an arrest.

We must limit the question before us. Many of the problems discussed in the District's (petitioner's) brief are not in the case."

Likewise, it is appropriate to call the attention of the Court to the fact that in petitioner's brief "many of the problems discussed in the petitioner's brief are not in the case" on the appeal to this Court. Much space is devoted in petitioner's brief to a general discussion of garbage and court decisions relating generally to that subject, to communicable disease, to nuisances, to drainage, plumbing, electrical inspectors, boiler inspectors, fire inspectors, rodents, in fact to almost all the subjects in which a municipality may engage. The brief of respondent could not appropriately follow the petitioner into its rambling discussion of generalities in these various subjects which are unrelated to the issues before the Court on this appeal. No such task will be undertaken by respondent.

COUNTER STATEMENT OF CASE.

Respondent cannot fully agree with the factual statement of the case as set out in petitioner's brief. Respondent was charged and convicted in the Municipal Court as follows:

> That she "on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an act of Congress, The Health Regulations, contrary to and in violation of an Ordinance Regulation in such cases made and provided, and constituting a law in the District of Columbia."

The simple facts were, which are disclosed by the record certified by the trial Justice and the testimony he heard on the trial, that late in the afternoon of September 9th, 1947, one C. Abney, an inspector of the Health Department of the District of Columbia, appeared, accompanied by M. A. Dixon, a Metropolitan police, in front of the prem-

ises 1315 10th Street, northwest, which premises was the private residence of respondent. A young man by the name of Allen who was a visitor in said home approached the house. The health inspector demanded of Allen that he unlock the door and permit the inspector to enter the house. Allen's reply was that he did not live there and that he could not comply with the request. About that time respondent approached her home from across the street and called out to Allen not to unlock the door. When she had reached the place where Allen, the inspector and the policeman were it was made known to the inspector that the house was respondent's private residence. The inspector then demanded of her that she unlock the door and permit him to enter. This she refused to do. She explained to him that the house was her private residence; that she had some Constitutional rights that protected her in her private home and in her privacy of it.

Neither the inspector nor the policeman had a warrant, writ or other process of any kind from any court entitling them or either of them to enter the house. The respondent had been given no notice of their coming. After considerable discussion and argument about the right of the inspector to enter the private dwelling of respondent, and after she had explained to him what she believed to be her Constitutional rights about their entry under the circumstances, respondent and Allen were summarily arrested on the spot by the policeman on the oral command of the inspector. They were then carried under arrest to a call box from which a police van was summoned. The respondent and Allen were detained under arrest until the patrol van came, then they were loaded into it and carried to a police precinct. They were held there until about nine o'clock that night when respondent was located by her husband who came and put up a deposit of $25.00 for her release.

The next day, September 10, 1947, the said C. Abney, health inspector, filed the foregoing charge against respondent on which she was tried and convicted.

On the trial no testimony was offered by petitioner to show that there was garbage or any other condition in the home of respondent which would indicate that anything therein was out of order. Although Cobb, the person who was alleged to have made the "complaint" to the Health Department was in court at the trial he was not introduced by petitioner as a witness. The only excuse given by the health inspector for his conduct in trying to enter the private residence of respondent was that it had been "reported" to the Health Department that uncovered garbage was in the house, and that proper use of the toilet facilities was not being availed of. There was no verification that an "occupant" in the house made any such complaint and the record certified by the trial Justice does not support the statement.

The arbitrary and high-handed procedure of this inspector of the Health Department is disclosed by the evidence in this case. He went to the private residence of respondent. He would brook no opposition, although he had no warrant or other authority to enter this home over the objection of the owner. He armed himself with a Metropolitan police. Should respondent object to his entry of her home, as she did, he would have her summarily arrested by the policeman and haul her away to prison. No warrant he contends was necessary. His command on the spot became the law which the policeman obeyed, in total disregard of respondent's constitutional rights.

QUESTION PRESENTED.

The questions presented in this case are considerably broader than is set out in petitioner's brief (p. 6). When the case came on for trial after the close of the testimony and oral argument the trial justice invited counsel to submit written briefs. This was done. The respondent cited all the acts of Congress under which the District of Columbia was empowered to enact the Ordinance under which respondent was being prosecuted. She contended there was

authority granted by Congress to the District of Columa under which Ordinance could be enacted to authorize e action being exercised by the health inspector. Respont specifically stated in writing the following propositons to the trial court:

"1. The proof shows that the place the Health Officer was seeking to enter and inspect was a private dwelling house; there was no proof that there was an infectious or other disease therein; that there was no condition therein which could in any way effect the public health.

"2. That an invasion and entry of said private dwelling house by the Health Inspector, over the objection of the defendant (respondent), the occupant, was an illegal act and an invasion of defendant's (respondent's) Constitutional rights.

"3. That the entry of said Health Officer, over the objection of defendant (respondent) would have been an unlawful act and an invasion of her rights of privacy.

"4. That any Ordinance of the District of Columbia which sought to give the Health Inspector a right to enter the private dwelling house of defendant (respondent) without a warrant, writ or other legal authority, and without notice to her, was beyond the authority of the Commissioners of the District of Columbia to enact, and beyond the power granted the District by Congress.

"5. That any attempt by Congress to give the District of Columbia power to enact an Ordinance to give the health inspector authority to enter the private dwelling of defendant (respondent) over her objection and without a warrant was beyond the power of Congress to enact, was un-Constitutional, and was an invasion of defendant's (respondent's) Constitutional rights." (R. 7)

All of the above objections were earnestly renewed and ressed in the Municipal Court of Appeals, and in the Cirit Court of Appeals, and are now insisted on as being ell taken on the appeal in this Court.

ARGUMENT.

The United States Court of Appeals for the District of Columbia reduced the question for consideration by it, as follows: "The simple question is: Can a health officer of the District of Columbia inspect a private home without a warrant if the owner or occupant objects?" It then states: "The Fourth Amendment to the Constitution applies," and cites the following authorities, *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246 (1940); *National Mutual Ins. Co. of D. C.* v. *Tidewater Transfer Co., Inc.*, 17 U. S. L. Week 4536 (U. S. June 20, 1949).

The mission of C. Abney to the home of respondent was not one to make an "inspection" as the term is usually applied, as when a piece of machinery, a piece of work, a building job, etc. is inspected. He came in the name of the Health Department, accompanied by a uniformed Metropolitan police officer to make a "search" not an "inspection" for incriminating evidence in the home of respondent. Otherwise why should he have been accompanied by a policeman from the criminal enforcement division of the District of Columbia? Why should the health inspector have been provided by the police department on this occasion, with a policeman unless it was to have him testify against respondent in the event incriminating evidence should be found on a search of her home by the health inspector and the policeman or unless it was for the purpose of making an arrest at the command of the health inspector? This police officer was on duty; he was in uniform; the search of respondent's home had been planned to look for incriminating evidence with which to prosecute respondent under the Ordinance.

This was in no sense a civil action. The Ordinance under which the health inspector proceeded provided criminal penalties as, the action taken illustrates; it provided for a fine and imprisonment of respondent.

The only "interference" the petitioner sought to prove against respondent was that she refused to become his un-

willing agent, while on the outside of her home, and unlock the door of her home, and permit him and the policeman to enter and make a search for incriminating evidence against her. Had she been on the inside of her home and refused to obey the command of the health inspector to unlock the door to her home and permit him and the police officer to enter and make the search the factual situation would have been no different. She was within her legal rights in refusing to permit the entry and in taking the course she did. Her arrest and conviction on the charge stated was unlawful.

Police Powers of the District of Columbia. The Commissioners of the District of Columbia can exercise only such powers as are granted to it by Congress within Constitutional Limits. The District of Columbia possesses no inherent Police Power such as do the States.

Taylor v. *District of Columbia*, 24 App. D. C. 392, is the only case that has construed the Ordinance under which respondent was prosecuted. The court in that case in discussing the powers of the Commissioners of the District of Columbia to enact ordinances, by reason of powers granted it by Congress, held:

> (Syllabus) A. "When any part of the police power, which resides primarily in the State, is conferred upon a municipality, no more power is presumed to have been granted than is expressly stated in the words of the grant."
>
> (Syllabus) B. "When the municipal authorities have no power to make a municipal regulation it is void, although it is reasonable, just, and proper in itself, even if necessary for the preservation of peace and good."

Congressional Acts under which Ordinance in Question Could have been Enacted. I have made a thorough search for all Acts of Congress under which the Ordinance relied on by petitioner could have been enacted. They are as follows:

February 26th, 1892—52 Cong., Sec. 1, Res. 4-7, 1892.

"(4). Joint Resolution to regulate the licenses to proprietors of theaters in the City of Washington, District of Columbia, and for other purposes.

"That all licenses issued by the District of Columbia to proprietors of theaters or other public places of amusement in the City of Washington, District of Columbia, and now in force, be and the same are hereby terminated, unless the person holding such license shall within ten days after due notice to comply with such regulations as may be prescribed for public safety by the Commissioners of the District of Columbia.

"2. That the Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the Act of January 26, 1887, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia.

Approved February 26, 1892."

The Act of Congress of January 26, 1887 (Chapter 45, Statutes of the U. S. at Large, Vol. 24, page 365) referred to in the above Act of February 26, 1892, provides:

"Ch. 45. An act for the further protection of property from fire, and safety of lives, in the District of Columbia.

"That it shall be the duty of the owner in fee or for life of every building constructed and used or intended to be used, as a hotel, factory, manufactury, theater, tenant-house, seminary, college, academy, hospital, asylum, hall, or place of amusement * * * or using any building 50 feet high to erect fire escapes."

No other purpose or purposes are covered by the above quoted Act of Congress than that of providing protection from fire in buildings used by the public or buildings of a public nature.

Based on the above Congressional Authority to enact "all such reasonable and usual police regulations" the Commissioners for the District of Columbia enacted the following Ordinance:

"Office of the Commissioners of the District of Columbia.

Washington, April 22d, 1897.

"Ordered: That pursuant to the 'Joint Resolution to regulate licenses to proprietors of theaters in the City of Washington, District of Columbia, and other purposes' the following regulations concerning the use and occupancy of buildings in the District of Columbia are hereby made.

"1. That it shall be and is hereby, made the duty of any owner of any premises or building situated in the District of Columbia to provide and furnish such building and premises, etc. * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises in the District of Columbia, or, if such premises be not occupied, of the owner thereof, to keep such premises or part, etc. * * * clean and wholesome. If upon inspection by the Health Department, it be determined that any such part, or any building, yard, etc. * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, shall be notified and required to place same in a clean and wholesome condition; and in case any person shall fail or neglect to place said premises or part in such condition within the time allowed by said notice, he shall be liable to the penalties hereinafter provided.

"10. The Health Office shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition, and make a record of such examination; of the location of the building; the purpose for which it is used, and the name of the owner and lessee and occupant. If after such examination he shall deem any structure or building, or any part thereof or appurtenances thereto in such condition as

to endanger the health of the inmates thereof, or of those living in the vicinity, he shall serve upon the occupants or cause to be served a notice in writing upon the owner, agent, or other party having interest in said structure, requiring same to be put in proper condition within the time as he may direct; and it shall thereupon be the duty of such interested party or parties to comply with and execute the order of the Health Officer under the penalties as provided in Section 12 of this regulation, unless an appeal is taken as hereinafter provided, * * *

"12. That any person violating or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction in the Police Court, be punished by a fine of not less than $5.00 nor more than $45.00.

"Amendment of July 28, 1922."

When respondent came on for trial on a criminal charge of violating the above Ordinance, that she interfered with a health inspector by refusing to unlock her private dwelling and permit him on his demand, to enter her home, without a warrant or other authority except his oral command, and after the testimony was closed she filed in writing (R. 7) the five reasons herein above set forth raising her constitutional objections to the proceeding. For those reasons demanded that she be found not guilty by the trial court.

Notwithstanding the foregoing challenges to the application of the Ordinance to respondent's private dwelling house (there is no contention that this ordinance is not good when applied in the way Congress intended, that is to public places, places under the supervision of the District of Columbia, licensed boarding houses, hotels, and places with which such ordinances usually and customarily deal, within the power granted by Congress to the District to supervise in the public interest) the trial Justice

convicted respondent on the charge of interfering with a health officer in the performance of his duty, when the only pertinent proof against her was that she refused to unlock the door to her home, a private residence, and permit the health inspector and the police officer to enter to make a search for evidence with which she could be incriminated should she be charged as a result of the search.

Unconstitutional Ordinances. An ordinance enacted by a city must not only be within the power granted by the State or Congress to enact the ordinance but it must not infringe on the Constitutional rights of individuals. In *Buchanan* v. *Warley,* 245 U. S. 60, the Court said:

> "It is equally established that the Police power, broad as it is, cannot justify the passage of a law which runs counter to the limitations of the federal Constitution; that principle has been so frequently affirmed in this Court that we need not stop to cite cases."

Application of the Fourth Amendment. In this case, *District of Columbia* v. *Little* (decided August 1, 1949) in the opinion written by Justice Prettyman in the United States Court of Appeals for the District of Columbia, the Court said (R. 21):

> "The Fourth Amendment did not confer a right upon the people. It was a precautionary statement of a lack of federal governmental power, coupled with a rigidly restricted permission to invade the existing right. The right guaranteed was a right already belonging to the people. The reason for the search warrant clause was that public interest required that personal privacy be invaded for the detection of crime, and the Amendment provided the sole and only permissible process by which the right of privacy could be invaded. To view the Amendment as a limitation upon an otherwise unlimited right of search is to invert completely the true posture of rights and the limitations thereon.

"Much of the argument of the District is devoted to establishing the public importance of the health laws. Assertions are also made of the beneficence and forbearance of health officers. But the constitutional guarantee is not restricted to unimportant statutes and regulations or to malevolent and arrogant agents. Even for the most important laws and even for the wisest and most benign officials, a search warrant must be had.

"We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite.

"To be certain that we have stated the rule no broader than existing law, one has only to read the cases cited, supra in footnote 5; (Agnello v. United States, 269 U. S. 20, 70 L. Ed. 145, 46 S. Ct. 4 (1925); Harris v. United States, 331 U. S. 145, 91 L. Ed. 1399, 67 S. Ct. 1098 (1947); Davis v. United States, 328 U. S. 582, 90 L. Ed. 1453, 66 S. Ct. 1256 (1946); Johnson v. United States, 333 U. S. 10, 92 L. Ed. ...., 68 S. Ct. 267 (1949); McDonald v. United States, 335 U. S. 451, 93 L. Ed. ...., 69 S. Ct. 191 (1949); Wolf v. Colorado, 17 U. S. L. Week 4639 (June 27, 1949)). Indeed the opinions in McDonald v. United States alone are sufficient."

Search Warrant Required. The Supreme Court in *McDonald v. United States, supra* (December 13, 1948) through Mr. Justice Douglas, the Court said:

"We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor

to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade the privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of a home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation made the course imperative."

In *Agnello* v. *United States*, 269 U. S. 20, 46 S. Ct. 4 (1925), the Court said:

"While the question has never been directly decided by this Court, it has always been assumed that one's house cannot be lawfully searched without a warrant, except as an incident to a lawful arrest therein. Boyd v. United States, 116 U. S. 616, 624, et seq., 630, 6 S. Ct. 524, 29 L. Ed. 746; Weeks v. United States, supra, 393; Silverthorne Lumber Co. v. United States, supra, 391; Gouled v. United States, 255 U. S. 298, 308, 41 S. Ct. 261, 65 L. Ed. 647. The protection of the Fourth Amendment extends to all equally—to those justly suspected or accused, as well as to the innocent. Search of a private dwelling without a warrant is in itself unreasonable and abhorrent to our laws. Congress has never passed an act purporting to authorize the search of a house without a warrant. • • • Save in certain cases as incident to arrest, there is no sanction in the decisions of the court, federal or state, for search of a private dwelling house without a warrant. Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause" (citing many authorities).

In an examination of the numerous cases from all the courts applying the Fourth Amendment to the protection of the security of the home I have failed to find any authority holding that a private home may be subjected to a search warrant except to enforce the law against crime. The only condition on which a search warrant may be obtained is set forth in the Fourth Amendment. I have failed to find a holding by any court that a private home may lawfully be invaded by an officer unless his business was to carry out the provisions of a search warrant, or unless he was engaged in making an arrest when faced with "some grave emergency" that would not permit delay in securing a search warrant. Because of the inherent rights of the people to privacy in their homes I do not believe there is any power under our system of government or any provision in the Fourth Amendment to the Constitution to authorize the issuance of a search warrant to make a search of a private home where the enforcement of the criminal law is not the objective. There is no such thing recognized by the law as a peaceful forced "inspection," by an officer, of a private home over the objection of its owner where a refusal of permission of such "inspection" would subject the owner of the home to a criminal prosecution, such as is the case against respondent.

The Right to be Let Alone in the Home. Mr. Justice Brandies stated the philosophy back of the adoption of the Fourth Amendment to the Constitution in his dissenting opinion in *Olmstead* v. *United States,* 227 U. S. 438, 478, 48 S. Ct. 564, 572, as follows:

> "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's natural nature, his feelings and his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most

valued by civilized men. To protect that right, every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed to be a violation of the Fourth Amendment."

The sanctity of the home is not an idea of recent origin. It has come down to us from ancient times, where freedom prevailed. Only in totalitarian governments is the home subject to invasion by officers of the government. It was Lord Chatham, the great Pitt, who said:

> "The poorest man may, in his cottage, bid defiance to all forces of the crown. It may be frail; its roof may leak; the wind may play through it; the storm may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenament."

Sir Edward Coke said: "The house of every man is to him his castle and fortress, as well for his defense against injury and violence as for his repose."

These principles, after the evils of the general writs of assistance became manifest, were crystalized and perpetuated in America into the Fourth Amendment of the Constitution. It recognized the inherent rights of the people "to be let alone in their homes" and spelled out in the Fourth Amendment the only manner in which the privacy of the home could be invaded by the officers of the government.

Harvard Law Review, Vol. 63, No. 2, page 349 (December 1949) in its note on this case, *District of Columbia* v. *Little*, 18 U. S. L. Week, 2076 (D. C. Cir. Aug. 1, 1949), says:

> "In fact recent applications of search-and-seizure restrictions to administrative proceedings which are primarily civil, though they involve possible penalties, have a tendency away from this narrow construction. See Note, 54 Harv. L. Rev. 1214 (1941). However, the right to be let alone is probably the fundamental principle involved in the Fourth Amendment, see Brandies, J., dissenting opinion in Olmstead v. United States

(277 U. S. 438, 448—1928); and thus it can matter little whether a policeman or health inspector intrudes. Cf. Davis v. United States, 328 U. S. 582, 587 (1946). Historically it was probably the abuses of the general warrant which led to the adoption of the Fourth Amendment, but the individualistic spirit of that age would have rebelled equally at noncriminal invasion of the home unknown in 1780 when government was simpler. Although a further distinction has been made between 'search' and 'investigation,' on the theory that a 'search' is looking for some particular object capable of seizure, while an 'investigation' means merely looking around, it seems the broader type of inquiry is even more dangerous to privacy and security. Sullivan v. Brawner, 237 Ky. 730, 36 S. W. 2d 364 (1931).

"Mass. Gen. Laws c. 111, sec. 131 (1932), requiring warrants for home health inspections unless immunity is waived, seems reasonable and in accordance with normal public health practice. Parker and Worthington, Public Health and safety 162 (1892). A satisfactory balance between the agencies of the modern social organizations and the demands of personal privacy would be achieved by casting around the home this protection, which has been denied more public places, where the danger of disease is greater and the intrusion less."

CONCLUSION.

This case was correctly decided by the United States Court of Appeals for the District of Columbia. The opinion of that Court is masterful in dealing with the issues presented. The legal theories of the case as discussed in the brief for petition are entirely beside the points properly before the Court on this appeal. The judgment of the Court of Appeals was correct, and should be affirmed.

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